
(2019) 05 DEL CK 0462

In the Delhi High Court

Case No : Criminal Appeal No. 723, 751 Of 2013

Rajvir Singh @ Rajbir Singh

APPELLANT

Vs

Central Bureau Of Investigation

RESPONDENT

Date of Decision : 31-05-2019

Acts Referred:

Indian Penal Code, 1860 — Section 120B, 217
Prevention Of Corruption Act, 1988 — Section 13(1)(d), 13(2)
Code Of Criminal Procedure, 1973 — Section 313

Citation : (2019) 05 DEL CK 0462

Hon'ble Judges : Sunil Gaur, J

Bench : Single Bench

Advocate : Sanjay Dewan, R. P. Luthra, Sourabhi Luthra, Mridul Jain, Pramod Kumar Dubey, Amit Rathor

Final Decision : Disposed Of

Judgement

Sunil Gaur, J

1. The above two captioned appeals arise out of common judgment of 18 th May, 2013 which pertains to R.C.CY 1 2006 E 0005. With the consent of learned counsel for the parties, the above captioned two appeals have been heard together and are being decided by this common judgment.

2. Appellants-Rajvir Singh and C.B.Singh have been held guilty of the offences under Section 120B IPC read with Section 13(2) read with Section 13(1) (d) of The Prevention of Corruption Act, 1988 (henceforth referred to as the P.C. Act). Appellant-C.B. Singh has also been held guilty for offences under Section 217 IPC and Section 13(2) read with Section 13(1)(d) of P.C. Act as he had abused his official position as Junior Engineer, Shahdara South Zone, MCD being public servant by facilitating appellant- Rajvir Singh (a private builder) in raising of unauthorized construction in subject property No.362, West Guru Angad Nagar, Laxmi Nagar, Delhi and causing pecuniary advantage to him.

3. Vide impugned order of 21st May, 2013, both the appellants have been sentenced to rigorous imprisonment for three years with fine of Rs. 25,000/-each for the offences under Sections 120B read with Section 13(2) read with Section 13(1) (d) of P.C. Act with default clause. In addition, appellant-C.B.Singh has been further sentenced to rigorous imprisonment for two years with fine of Rs. 25,000/- for offences under Section 217 IPC with default clause. Appellant-C.B.Singh has been further sentenced to rigorous imprisonment of three years with fine of Rs. 25,000/- for the offences under Section 13(2) read with Section 13(1)(d) of P.C. Act with default clause.

4. The facts emerging from the impugned judgment are as under:-

"Briefly stating, the facts of the case are that during the year 2006, Hon'ble Delhi High Court passed orders in WP(C) 4582/2003 against the Engineers and Officials of MCD regarding unauthorized construction and CBI was directed to probe their nexus with their hierarchy in Engineering Department, Builders as well as Politicians. Preliminary inquiry was entrusted to Inspector J.R.Katiyar (PW-16) who after inquiry submitted a complaint Ex.PW15/A against accused persons and others regarding unauthorized construction in different properties. On the basis of complaint, FIR Ex.PW-15/B was registered.

Investigation of the case was entrusted to Inspector R.C.Karnatak (PW-15). During investigation, it revealed that accused C.B. Singh abused his official position and caused undue pecuniary gain to co-accused Rajvir Singh in the matter of unauthorized construction on property No.262, West Guru Angad Nagar, Laxmi Nagar, Delhi, carried out by accused Rajbir Singh. Accused C.B. Singh did not take any coercive action against unauthorized construction raised on the said property. It also revealed that accused C.B.Singh entered into a criminal conspiracy with accused Rajbir Singh in completion of unauthorized construction. Investigation also revealed that unauthorized construction on property No. 362, West Guru Angad Nagar, Laxmi Nagar, Delhi was carried out and accused Rajvir Singh constructed flats on the said property without any approved sanction plan and sold them to different buyers. Building Watch Register was referred which revealed that no action was taken by MCD staff to stop unauthorized construction at the said property and even the said building was not booked. Complaints about unauthorized construction was received in the office of MCD Shahdara, South Zone but despite the same, property was not booked as unauthorized construction. At that point of time, accused C.B. Singh was the Junior Engineer. Investigation further revealed that plot No.362, West Guru Angad Nagar was in possession of accused Rajvir Singh during the year 2000 who started construction activities on the same during the year 2001. Accused C.B. Singh, the then J.E., was in knowledge of unauthorized construction as the same was located in his jurisdiction. An intimation in this regard was sent by P.S.Shakarpur to MCD, Shahdara, South Zone which was ultimately received by accused C.B. Singh but he did not take any action to demolish at on-going stage, book it, seal it and allowed it to be constructed further."

5. Prosecution to prove its case had relied upon deposition of 16 witnesses. Out of whom Inspector J.R.Katiyar (PW-16) is the complainant and Inspector R.C.Karnatak (PW-15) is the Investigating Officer. Trial Court has relied upon the prosecution version and has discarded the stand taken by appellants in their statements recorded under Section 313 Cr.P.C. and evidence of two defence witnesses, to convict and sentence the appellants as noted above.

6. The findings returned by the trial court in the impugned judgment are as under:-

"36. There is no dispute with regard to ownership of property No.362, West Guru Angad Nagar, Delhi by accused Rajvir Singh. This fact has also been corroborated from the testimony of PW6 Vinod Kumar Sharma who deposed that he is residing in flat No.8, III Floor, 362, West Guru Angad Nagar, Delhi since 2002. He further deposed that said flat was purchased from accused Rajvir Singh and he handed over documents Ex.PW-6/B to the CBI in this regard. He further deposed that by the time, flat was purchased by him in May, 2002, major portion of the construction was complete. Similarly, PW8 Sh. Ajay Maheshwari has stated that he is residing in a flat in property in question since 2001. PW12 Sh. Ajay Jhunjhunwala has stated that he purchased flat in the year 2002. Both these witnesses have stated that they purchased flats from accused Rajvir Singh and that they had handed over documents Ex.PW8/B and Ex.PW12/B respectively to the CBI.

37. As per testimony of owners of flats/shops in property in question, accused Rajvir Singh was the owner of premises in question. It has been established on record that accused Rajvir Singh raised unauthorized construction on the property in question and the said fact has been established from letter Ex.PW2/B vide which it was informed by MCD that no building plan was got sanctioned by accused Rajvir Singh for raising construction on the property in question. Unauthorized construction has also been established from letter Ex.PW-2/C vide which it was informed that the property in question was not booked against unauthorized construction .

38. It has been established that accused Rajvir Singh was the owner of the property in question and raised unauthorized construction over it. It has also been established that the unauthorized construction raised on the property in question owned by accused Rajvir Singh was not booked by accused C.B. Singh who was posted in the concerned ward being Junior Engineer and Incharge of the area in violation of manual of instructions of MCD Ex.PW1/A and by abusing his official position did not take any coercive action on the unauthorized construction which establishes criminal conspiracy and prior meeting of minds of both the accused and in order to achieve the object of said criminal conspiracy, no booking of the unauthorized construction on the property in question was done by accused C.B. Singh and thus he facilitated his co-accused Rajvir Singh, owner of the property in question, in gaining pecuniary advantage. The prosecution has successfully established the charge of criminal conspiracy against both the

accused persons."

7. Mr. Sanjay Dewan learned Counsel for appellant- Rajvir Singh and Mr.P.K.Dubey, counsel for appellant-C.B.Singh submitted that appellant-Rajvir Singh had purchased the property in question as well as adjoining property No.361, West Guru Angad Nagar, Laxmi Nagar, Delhi in the year 1999 and had constructed the flats in the property in question in the year 2000. It was further submitted that under the orders of this Court in a 'Public Interest Litigation', the investigation in this RC was carried out from 12th May, 2001 to 31st October, 2002. It was next submitted that West Guru Angad Nagar is an unauthorised colony, therefore, there are no sanctioned building plans. It was pointed out that as per document Ex.PW-6/B, flat on 3rd floor in property in question was sold by appellant- Rajvir Singh to one Vinod Kumar Sharma (PW-6) on 29th May, 2002. It was also pointed out that as per document Ex.PW-8/B, flat No.3 and 4 on the second floor in the subject property was sold by appellant-Rajvir Singh to one Ajay Maheshwari on 16th August, 2001.

8. Attention of this Court was drawn by appellant's counsel to Ex.PW-5/B to point out that out of nine water connections, one water connection was in the name of appellant-Rajvir Singh, and eight water connections in favour of appellant-Rajvir Singh, his wife and daughter were sanctioned by the MCD in respect of the property in question. Attention of this Court was also drawn to the evidence of Satish Chand Sharma (PW-5), an official from Water Wing of MCD, to point out that the building in question was complete in all respect at the time of sanctioning of water connections and water connections are sanctioned only after physical inspection of the property by technical staff i.e. Zonal Engineer (Water)/ Junior Engineer (Water), MCD. It was further submitted that appellant-C.B.Singh was posted as Junior Engineer of Ward No.73-74, Shahdara Zone, Delhi after 28 th February, 2002 and the constructions in question are of period prior to his posting in the said Ward and so, there was no question of his facilitating unauthorized construction in the subject property.

9. It was next submitted that one Smt.Radha Devi had filed a civil suit against appellant-Rajvir Singh in respect of property No.362, West Guru Angad Nagar, Delhi and in the written statement (Ex.DW1/1) filed on behalf of MCD, it was stated that the construction in property No.362, West Guru Angad Nagar, Laxmi Nagar, Delhi is old one, whereas new construction made in adjoining property No.361, Guru Angad Nagar was booked and demolished. Impugned judgment was assailed on behalf of appellants on the ground that the aforesaid vital aspects have not been considered by the learned trial court and so, the impugned judgment and order on sentence deserve to be set aside.

10. On the contrary, learned Special Public Prosecutor for CBI supported the impugned judgment and order on sentence and submitted that conviction is duly supported by evidence on record. It is submitted that the period of scrutiny did not relate to the year 2001-02 only, as any unauthorized construction detected thereafter cannot be allowed to go scot free. It was also submitted that as per

documents Ex. PW-2/D, appellant- C.B.Singh was posted in the area in question and from the evidence of R.K.Bansal (PW-3); Vinod Kumar Sharma (PW-6) and H.C. Rajeev Sharma (PW-7), it stands proved that the construction was in progress in the property in question in the year 2001-02. It was further submitted that the stand taken in written statement filed in civil suit by one Radha Devi, has no binding effect. Lastly, it was submitted that inference of criminal conspiracy can be reasonably drawn from the illegal acts or omissions committed by appellants and the trial court has rightly held that the charge levelled against appellants stands duly proved. Thus, it was submitted that these appeals deserve dismissal.

11. Submissions advanced by both the sides have been duly considered and the evidence on record has been scrutinized and thereafter, it becomes evident that property in question was purchased by appellant- Rajbir Singh in the year 1999 and he had made construction on this property in the year 2000. It is relevant to note that the period of scrutiny is from May, 2001 upto October, 2002. As per deposition of Inspector R.C.Karnatak (PW-15), document D-18 (Ex. PW-2/D) reveals that appellant C.B.Singh was not posted in the area in question during the relevant period. It has come in the evidence of Officer Incharge, MCD (PW-2) that he had not checked the record prior to the year 2003. So, the evidence regarding appellant-C.B.Singh being posted in the area in question is not forthcoming. Otherwise also, it has come in the evidence of Ram Kumar Gupta (PW-1), a witness from MCD, that no building plan is sanctioned in respect of any plot which does not form part of approved lay out plan and construction in unauthorized colony always takes place without sanction of MCD. It has also come in the evidence of this witness that unauthorized construction booked last has to be demolished first and that the construction in the unauthorized colonies takes place haphazardly. This witness has gone to the extent of stating on record that it is not necessary to presume that bribery angle is involved, in case no action is taken by the MCD officials. Inspector R.C. Karnatak (PW-15) in his evidence submitted that the property in question is not situated in an authorized colony and that the period of scrutiny was from May, 2001 to October, 2002. This witness has also deposed that in the written statement filed in the civil suit, it was admitted by MCD that construction in the subject property was an old one.

12. In the face of the afore-referred clinching evidence, this Court is of the considered view that the trial court has erred in convicting the appellants for the offence in question, as the prosecution case set up against them does not stand proved beyond reasonable doubt. Consequentially, finding the conviction of appellants to be unsustainable, it is set aside and appellants are acquitted of the charges framed against them.

13. In light of the above, the above captioned two appeals are accordingly disposed of.